



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 4, 2004

Ms. Theresa Lock
Support Services
Williamson County Sheriff's Office
508 South Rock Street
Georgetown, Texas 78626

OR2004-4555

Dear Ms. Lock:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 202994.

The Williamson County Sheriff's Office (the "sheriff") received a request for "dispatch audiotapes or any other reports or documentation [related to an incident] on Gabriel Mills Drive on March 28th." You state that some responsive information has been released to the requestor. You claim that the remaining requested information is excepted from disclosure under sections 552.101, 552.108, and 552.130 of the Government Code. We have considered the exceptions you claim.

We begin by noting that section 552.301(e) of the Government Code requires a governmental body to submit to this office within fifteen business days of receiving an open records request (1) general written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. *See* Gov't Code § 552.301(e). As of the date of this letter, you have not provided this office with

general written comments stating the reasons why the stated exceptions apply that would allow the information at issue to be withheld or a copy or representative sample of the information that the sheriff seeks to withhold. Consequently, you failed to submit the requisite information within the fifteen business day period mandated by section 552.301(e) of the Government Code.

Because the sheriff failed to comply with the procedural requirements of section 552.301 with regard to the requested information, the information at issue is now presumed public. *See* Gov't Code § 552.302; *see also* *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379 (Tex. App.--Austin 1990, no writ); *City of Houston v. Houston Chronicle Publ'g Co.*, 673 S.W.2d 316, 323 (Tex. App.--Houston [1st Dist.] 1984, no writ); Open Records Decision No. 319 (1982). The sheriff must demonstrate a compelling interest in order to overcome the presumption that the information at issue is now public. *See id.* Normally, a compelling interest is demonstrated when some other source of law makes the requested information confidential or when third party interests are at stake. *See* Open Records Decision No. 150 at 2 (1977). Although the sheriff claims that the information at issue is excepted from disclosure pursuant to section 552.108 of the Government Code, the sheriff in this instance has not demonstrated a compelling interest under this exception to disclosure that would allow any portion of the information at issue to be withheld from disclosure. *But see* Open Records Decision No. 586 (1991) (need of another governmental body to withhold requested information may provide compelling reason for nondisclosure under section 552.108 in certain circumstances). Accordingly, we conclude that the sheriff may not withhold the information at issue under section 552.108 of the Government Code.

Furthermore, although the sheriff claims that the information at issue is excepted from disclosure pursuant to sections 552.101 and 552.130 of the Government Code, which can provide compelling reasons for nondisclosure of requested information under section 552.302, we have no basis for concluding that it is so excepted under these exceptions to disclosure because the sheriff failed to submit any portion of the information at issue to us for our review. Accordingly, we also conclude that the sheriff may not withhold any portion of the information at issue under section 552.101 or 552.130 of the Government Code. Consequently, the sheriff must release the information at issue to the requestor.

However, we caution the sheriff that section 552.352 of the Government Code imposes criminal penalties for the release of confidential information. *See* Gov't Code § 552.352. Prior to releasing the information at issue, the sheriff should ensure that it does not contain any such confidential information. If the sheriff believes that any portion of the information at issue is indeed confidential and may not lawfully be released, it must challenge this ruling in court as outlined below.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877)673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental

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body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512)475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Cindy Nettles
Assistant Attorney General
Open Records Division

CN/jh

Ref: ID# 202994
No enclosures

c: Ms. Sarah Coppola
Austin American-Statesman
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(w/o enclosures)